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PATENT

Attorney Docket No. 7372/70911

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:

NISHIKAWA et al.

Art Unit: 1636

Application. No.: 09/806,197

TECH CENTER 1600/2900

Examiner: Bronwen Loeb

Filed: March 27, 2001

For: PROMOTERS AND PLANT TERMINATORS

September 13, 2002

**RESPONSE TO REQUIREMENT FOR RESTRICTION**

Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Applicants acknowledge belated receipt of the July 16, 2002 requirement for restriction.

Applicants first request the Examiner to confirm safe receipt and entry for the August 28, 2002 document entitled "Submission of Power of Attorney" so that all further communications are directed to Applicants' undersigned counsel of record.

According to Applicants' present understanding, the requirement for restriction categorized the claims into Group I (claims 1 and 3-10, drawn to a promoter of Seq. ID No: 1 and the first method of use for the promoter), Group II (claims 1, 3-7, 9 and 10, drawn to a promoter of Seq. ID No: 7), Group III (claim 8, drawn to a first method of use for the promoter of Seq. ID No: 7), Group IV (claim 11, drawn to a second method of use for the promoter of Seq. ID No: 1), Group V (claim 11, drawn to a second method of use for the promoter of Seq. ID No: 7), Group VI (claims 2, 4, 7, 9 and 10, drawn to a terminator of Seq. ID No: 2), Group VII (claim 8, drawn to a first method of use for the terminator of Seq. ID No: 2) and Group VIII (claim 12, drawn to a second method of use for the terminator of Seq. ID No: 2).

Applicants respectfully request the Examiner and reconsider and withdraw the requirement for restriction. Applicants respectfully note the earlier filed Information Disclosure Statement dated on or about June 4, 2001. Applicants also respectfully direct the Examiner's attention to the PCT documentation filed herein, which included reference to EP-A-0824150 (February 1998), from which it is clear that claims 1-12 define novel and unobvious inventions. There also does not appear to be an undue burden at all even though there are different Seq. ID No's disclosed herein. (If there are any questions concerning the nucleotide sequences between Seq. ID No: 1 and Seq. ID No: 7, please contact the undersigned.) Accordingly, it is not seen that there is an undue burden placed on the present Examiner to review the application on the merits. Therefore, consistent with the objectives of MPEP Section 803, Applicants respectfully request that all claims remain in the application and be examined on the merits.

In the event the Examiner does not withdraw the present requirement for restriction, Applicants earnestly request a rejoinder of non-elected subject matter upon allowance. Subject to the foregoing traverse, Applicants contingently elect Group I, claims 1 and 3-10, drawn to a promoter of Seq. ID No: 1 and the first method of use for the promoter.

Applicants further respectfully request favorable first action on the merits at the Examiner's earliest convenience.

Respectfully submitted,

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